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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 322

N. E. POPE, ET AL., PETITIONERS,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR CERTIORARI FILED SEPTEMBER 8, 1952
CERTIORARI GRANTED OCTOBER 27, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No.

N. E. POPE, A MINOR, AND NICK G. POPE, HIS GUARDIAN AD LITEM, PETITIONERS,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, A CORPORATION

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

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[fol. 1]

IN THE SUPERIOR COURT OF BEN HILL COUNTY, GEORGIA

No. —

ATLANTIC COAST LINE RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

N. E. POPE, Defendant

PETITION FOR INJUNCTION—Filed December 12, 1951

To the Superior Court of Ben Hill County, Georgia, and to the Honorable O. Wendell Horne, Jr., Judge thereof:

The petition of Atlantic Coast Line Railroad Company, a corporation, respectfully shows:

First

That the plaintiff, Atlantic Coast Line Railroad Company is, and was at the times herein stated, a corporation chartered under the laws of the State of Virginia, owning property, transacting business and having offices and agents in the County of Ben Hill, State of Georgia.

Second

The defendant, N. E. Pope, is and for many years has been a resident and citizen of Ben Hill County, Georgia.

Third

Plaintiff is and was at the times herein stated a common carrier of passengers and freight, operating lines of railroad in the States of Virginia, North Carolina, South Carolina, Georgia, Florida, and Alabama, including the operation of a line of railroad in the County of Ben Hill, State of Georgia.

Fourth

On or about the 20th day of August, 1951, the defendant, N. E. Pope, instituted action against the plaintiff in

the Circuit Court of Jefferson County, Alabama, claiming damages in the amount of Ten Thousand ($10,000.00) Dollars on account of personal injuries alleged to have been sustained by said defendant while engaged in the employ of [fol. 2] plaintiff, Atlantic Coast Line Railroad Company, at Westwood Shops in the County of Ben Hill and State of Georgia, due to the alleged negligence and carelessness of Atlantic Coast Line Railroad Company, its agents and employees. A copy of the complaint in said action is hereto attached as a part thereof, marked Exhibit "A", and for further particulars all due reference may be had thereto.

Fifth

N. E. Pope, the defendant herein, has been continuously a citizen and resident of the County of Ben Hill, State of Georgia, for 18 or more years and at all times during that period, Atlantic Coast Line Railroad Company and its predecessors has operated its lines of railroad and maintained regular offices and agents in said City of Fitzgerald, County of Ben Hill, State of Georgia, and in Wilcox, Irwin, Turner, and Coffee Counties which are adjacent to said county of Ben Hill, as well as in other counties in the State of Georgia in close proximity thereto; and defendant herein had a wide choice of convenient courts within the State of Georgia in which he might have instituted his action, as well as the District Court of the United States for the Middle District of Georgia, Americus Division, in which his case would have been tried at Americus, Georgia.

Sixth

The witnesses which the Atlantic Coast Line Railroad Company expects to use on its behalf in its defense of said action filed against it by N. E. Pope reside chiefly, if not wholly, in Ben Hill County, Georgia.

Seventh

The plaintiff herein is informed and believes that the defendant herein could not possibly have a single material witness residing outside of the State of Georgia, and County of Ben Hill.

[fol. 3] Eighth

In the event that such action is tried at Birmingham, Alabama, where it has been brought, it will be necessary for Atlantic Coast Line Railroad Company to transport a large number of witnesses, to wit, no less than six, to the City of Birmingham, Alabama, a distance of 313 miles or more, and to maintain them there at large expense awaiting and during the trial of said case.

Ninth

That in the trial of said cause at Birmingham, Alabama, the Atlantic Coast Line Railroad Company would be unable to compel the attendance by subpoena of such witnesses on its behalf and there exists grave doubt whether this plaintiff would be able to secure the voluntary attendance of all of such witnesses at the trial of said cause at Birmingham, Alabama. On the other hand, the attendance of all of the essential witnesses and production of necessary evidence on its behalf to defend said action would be compelled and obtained by the courts in the State of Georgia.

Tenth

The trial of said cause at Birmingham, Alabama, far distant from the place where said N. E. Pope resides and far distant from the place where his alleged cause of action arose will entail undue and prolonged absence of essential employees of the plaintiff from their customary occupation, which would seriously affect their uninterrupted operation of the railroad business of said Atlantic Coast Line Railroad Company in that the duties performed by such witnesses as experienced and essential employees whose places, if they can be filled at all during their absence, must be filled by less experienced employees, thereby greatly impeding the efficient operation of plaintiff's railroad lines; but if the case is tried at or in the vicinity of the residence of the defendant, or where his cause of action arose and where all of the principal fact witnesses reside, attendance upon the trial by the railroad employees will entail their absence [fol. 4] from their regular duties for only a short period of time.

Eleventh

On account of the facts and circumstances herein stated, plaintiff alleges that the action of the defendant, N. E. Pope, in thus attempting to escape the trial of said cause in the courts of the vicinity of his residence or in the vicinity of the place where the alleged cause of action arose will improperly, unreasonably, and inequitably burden and harass the plaintiff and will subject it to unnecessary and unreasonable inconvenience and expense and will operate as such a burden upon the efficient operation of plaintiff's lines of railroad, which are so indispensably necessary to the national defense and economy so as to constitute not only a burden upon interstate commerce, but also to impede the national defense effort.

Twelfth

The prosecution of the af-resaid action by the defendant, N. E. Pope, in the court at Birmingham, Alabama, will needlessly, vexatiously, and irreparably damage the plaintiff herein and also the public generally without any corresponding benefit to the defendant, and plaintiff verily believes that defendant's action has been brought at Birmingham, Alabama, not only for the purpose of avoiding the trial at or near his residence or at or near where his alleged cause of action arose, but also for the purpose of vexatiously harassing and annoying the plaintiff and subjecting it to unnecessary and unreasonable inconvenience and expense.

Thirteenth

Plaintiff is informed and believes that the condition of the dockets of the courts of this State and of this County, which are available to the defendant for the prosecution of his alleged cause of action aforesaid, are in such condition as to permit the fair, speedy and impartial trial of said cause of action.

Plaintiff further alleges that the prosecution of said cause of action by defendant in the Circuit Court of Jefferson [fol. 5] County, Alabama, imposes an unnecessary and oppressive burden upon that court in the trial of a cause of action wholly foreign to that jurisdiction between parties

who do not reside in Jefferson County, Alabama, thereby imposing upon the citizens and residents of that State and County an inequitable expense and undue burden upon such court in which said citizens and said court have no interest.

Fourteenth

Plaintiff alleges upon information and belief that N. E. Pope did not freely of his own volition and selection employ counsel at Birmingham, Alabama, but on the contrary, he was advised so to do by his Brotherhood representatives, and that such representatives assumed full charge of the alleged cause of action, and in fact, were the motivating force in the selection and employment of counsel at Birmingham.

Fifteenth

Plaintiff alleges upon information and belief that N. E. Pope purports to be represented at Birmingham by the firm of Jackson, Rives & Pettus, with offices in the Massey Building, Birmingham, Alabama, that in most instances said firm is not directly employed by the client which it purports to represent, but is employed by the reference of the case to it by representatives of the Railroad Brotherhoods.

Sixteenth

That during the past twenty-four months the firm of Jackson, Rives & Pettus has filed ten suits against the Atlantic Coast Line Railroad Company upon causes of action arising under the Federal Employers' Liability Act (45 U. S. Code, 51 et seq.), and that the plaintiffs in all except one of said suits were non-residents of the State of Alabama and all except one of said actions arose outside of the State of Alabama as follows:

Name of Plaintiff, Place of Accident, Residence of Plaintiff:

Annie Lois Presley, Admx., Estate of James G. Presley, Manchester, Ga., Georgia.
[fol. 6] J. T. Walthall, Manchester, Ga., Alabama.
E. C. Wright, Savannah, Ga., Georgia.
Andrew Poole, Cordele, Ga., Georgia.
G. I. Winn, Jr., LaGrange, Ga., Georgia.

Tom Burgess, Florence, S. C., South Carolina.
W. W. Barnes, Birmingham-Manchester, Georgia run, Georgia.
W. D. Walker, Nicholls, Ga., Georgia.
J. W. Wood, Jacksonville, Fla., Florida.
N. E. Pope, Fitzgerald, Ga., Georgia.

Seventeenth

The above acts of defendant are contrary to equity and good conscience and no adequate remedy is provided plaintiff at law.

Eighteenth

Plaintiff is without remedy against the wrongs herein alleged, except in a court of equity where matters of this kind are alone properly cognizant.

Nineteenth

Defendant is a minor above the age of fourteen years and it will be necessary that a guardian ad litem be appointed to represent the interests of said minor in this litigation.

Wherefore, the premises considered and waiving discovery, plaintiff prays:

(a) That this petition be sanctioned and ordered filed.
(b) That process do issue directed to said defendant, N. E. Pope, requiring him to be and appear within the time required by law to answer this complaint and that said defendant be served in the manner provided by law.
(c) That after the defendant, N. E. Pope, a minor, is served with a copy of this proceeding and order of court thereon, that the court appoint a guardian ad litem to represent the interests of said minor.
[fol. 7] (d) That at the hearing to be held at such time and place as may be fixed by the court an interlocutory injunction be granted restraining and enjoining the said defendant, his guardian, his next friend, his attorneys, agents, and any other person or persons acting at his direction or on his behalf from further proceeding in or the prosecution in any way of that certain action for damages referred to in paragraph 4 above, instituted by N. E. Pope, against Atlantic

Coast Line Railroad Company in the Circuit Court of Jefferson County, Alabama; claiming damages in the amount of $10,000.00, and also from either directly or indirectly doing or performing any act in connection with or in furtherance of said action, until the final trial of this cause.

(e) That upon the trial of this case a permanent injunction be granted restraining and enjoining the defendant, N. E. Pope, his guardian, his next friend, his attorneys, agents, representatives, and any other person or persons acting upon his direction or on his behalf from further proceeding on or the prosecution in any way of that certain action for damages referred to in Paragraph 4 above, instituted by N. E. Pope, against Atlantic Coast Line Railroad Company in the Circuit Court of Jefferson County, Alabama, claiming damages in the amount of $10,000.00, and also from either directly or indirectly doing or performing any act in connection with or in furtherance of said action.

(f) That a rule nisi issue requiring the said defendant, N. E. Pope, to show cause at such time and place as may be fixed therein, why an interlocutory injunction should not be granted as prayed for.

(g) That plaintiff have such other and further relief as may be equitable and just.

Jay, Garden, & Jay, Attorneys for Petitioner.
P. O. Address: Fitzgerald, Georgia.

[fol. 8] EXHIBIT A TO PETITION

Summons and Complaint

IN THE CIRCUIT COURT, TENTH JUDICIAL CIRCUIT OF ALABAMA

STATE OF ALABAMA,

Jefferson County:

To Any Sheriff of the State of Alabama . . . Greeting:

You are hereby commanded to summon Atlantic Coast Line Railroad Company, a corporation, to appear before the Circuit Court, to be held for said county, at the place of holding the same, within thirty (30) days from service of

this process, then and there to answer the complaint of N. E. Pope, a minor, 18 years of age, who sues by his father and next friend, Nick G. Pope.

Witness my hand this 20 day of August, 1951.

Julian Swift, Clerk.

N. E. Pope, a minor 18 years of age, who sues by his father and next friend, Nick G. Pope, Plaintiff,

vs.

Atlantic Coast Line Railroad Company, a corporation, Defendant

Count One

The plaintiff, N. E. Pope, a minor 18 years of age, who sues by his father and next friend, Nick G. Pope, claims of the defendant the sum of Ten Thousand Dollars ($10,000.00) as damages for that, heretofore, on, to wit, the 5th day of April, 1951, the defendant was engaged in the business of operating a railroad for the transportation of freight, passengers and express in interstate commerce, and in connection therewith owned and operated what was generally known as the Westwood Shops at Fitzgerald, Georgia, and plaintiff avers that on said date, plaintiff was employed by the defendant as a Carman Apprentice at said Westwood Shops and that a part of plaintiff's duties as such employee of the defendant was in the furtherance of such aforesaid [fol. 9] interstate commerce, or directly, or closely and substantially affected such interstate commerce, and plaintiff avers that on said date of April 5, 1951, while plaintiff was assisting two other employees of the defendant in installing an equalizer in the trucks of a railroad express car one of said employees of the defendant, while acting within the line and scope of his employment by the defendant and while engaged in such aforesaid interstate commerce, negligently caused or negligently allowed said equalizer to slip or to drop and to catch the fourth finger on plaintiff's left hand and plaintiff avers that as a proximate consequence of said negligence, he was injured and damaged as follows: The first joint of the fourth finger on the plaintiff's left hand was mashed off

and plaintiff's said finger was permanently injured and the use thereof permanently impaired, and plaintiff was caused to suffer great physical pain and mental anguish and will be caused to suffer great physical pain and mental anguish in the future, and his nerves and nervous system were shocked and permanently injured and plaintiff was caused to lose time from his employment and his power and capacity to work and earn money has been permanently impaired. Plaintiff avers that this cause of action is based upon and brought under what is generally known as the Federal Employers' Liability Act, enacted by the Congress of the United States for the benefit and protection of employees of common carriers by railroads engaged in interstate commerce.

Count Two

The plaintiff, N. E. Pope, a minor 18 years of age, who sues by his father and next friend, Nick G. Pope, claims of the defendant the sum of Ten Thousand Dollars ($10,000.00) as damages for that, heretofore, on, to wit, the 5th day of April, 1951, the defendant was engaged in the business of operating a railroad for the transportation of freight, passengers, and express in interstate commerce, and in connection therewith owned and operated what was generally [fol. 10] known as the Westwood Shops at Fitzgerald, Georgia, and plaintiff avers that on said date, plaintiff was employed by the defendant as a Carman Apprentice at said Westwood Shops and that a part of plaintiff's duties as such employee of the defendant was in the furtherance of such aforesaid interstate commerce, or directly, or closely and substantially affected such interstate commerce, and plaintiff avers that on said date of April 5, 1951, while plaintiff was assisting two other employees of the defendant in installing an equalizer in the trucks of a railroad express car, the said equalizer slipped or dropped and caught the fourth finger on plaintiff's left hand and plaintiff was thereby caused to be injured and damaged as follows: The first joint of the fourth finger on the plaintiff's left hand was mashed off and plaintiff's said finger was permanently injured and the use thereof permanently impaired, and plaintiff was caused to suffer great physical pain and mental anguish and will be caused to suffer great physical pain and

mental anguish in the future, and his nerves and nervous system were shocked and permanently injured and plaintiff was caused to lose time from his employment and his power and capacity to work and earn money has been permanently impaired, and plaintiff avers that all of his said injuries and damages proximately resulted, in whole or in part, from the negligence of an officer, agent, or employee of the defendant and while engaged in such aforesaid interstate commerce, or by reason of a defect, or insufficiency, due to the negligence of the defendant, in its cars, engines, appliances, machinery, works or other equipment. Plaintiff avers that this cause of action is based upon and brought under what is generally known as the Federal Employers' Liability Act, enacted by the Congress of the United States for the benefit and protection of employees of common carriers by railroads engaged in interstate commerce.

Jackson, Rives & Pettus, by A. G. Rives, Attorneys for Plaintiff.

[fol. 11] Plaintiff demands a jury trial.

Jackson, Rives & Pettus, by A. G. Rives, Attorneys for Plaintiff.

[fols. 12-15] *Duly sworn to by C. C. Howell. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 16] IN BEN HILL SUPERIOR COURT

[Title omitted]

GENERAL DEMURRER—Filed December 26, 1951

Now comes the defendant in the above styled cause and before pleading thereto demurs generally to the petition upon the following grounds, to wit:

1

That said petition sets forth no cause of action against this defendant.

2

That the facts set forth in said petition do not entitle the plaintiff to the equitable relief prayed for.

3

That said petition does not allege or show any legal or equitable ground for the relief sought therein.

4

That said petition sets forth no facts which would authorize the Court to grant any equitable relief because of laches therein disclosed.

Wherefore, defendant prays that these his demurrers be inquired of by the court and sustained and the petition of plaintiff dismissed.

J. C. McDonald, T. J. Lewis, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 17-28] [File endorsement omitted]

IN THE BEN HILL SUPERIOR COURT

[Title omitted]

ORDER SUSTAINING GENERAL DEMURRER—Filed February 15, 1952

After hearing argument on the general demurrer filed by the defendant in the above stated cause, it is hereby ordered that said general demurrer be, and the same is hereby sustained.

In the event the plaintiff files a bill of exceptions in this case within the time allowed by law and pays all accrued court costs, it is hereby ordered that supersedeas be granted in order to preserve the rights of the parties until the judgment of the Supreme Court of Georgia can be had and it is hereby ordered that the defendant, N. E. Pope, his guardian, his next friend or any other person or persons

acting upon his direction or on his behalf, be restrained from further proceeding on or prosecuting in any way that certain action for damages referred to in the petition in the above stated case and filed by the defendant, N. E. Pope, against the plaintiff, Atlantic Coast Line Railroad Company, in the Circuit Court of Jefferson County, Alabama, until such time as final judgment in this cause has been rendered in the Supreme Court of the State of Georgia and the remittitur thereon is received by this court from the Supreme Court of Georgia.

So ordered at Chambers this 7th day of February, 1952.

O. Wendell Horne, Jr., Judge Superior Court Cordele, Judicial Circuit.

[fol. 29] IN THE SUPREME COURT OF GEORGIA

No. 17843

ATLANTIC COAST LINE RAILROAD COMPANY

v.

POPE et al.

OPINION—May 13, 1952

By the COURT:

1. A court of equity in this State has jurisdiction to restrain a resident thereof from maintaining a suit in a court of a foreign State upon a cause of action arising in Georgia, upon the complaint of the defendant in the foreign action, who is subject to the jurisdiction of the courts of this State, where the foreign suit has for its purpose or necessary effect the obtaining of an inequitable or unconscionable advantage over the complainant.

2. The provisions of section 6 of the Federal Employers Liability Act (45 U. S. C. A. § 56) do not prohibit the courts of this State from restraining an employee, a resident of Georgia, from prosecuting an action for damages upon the cause of action arising in this State in a court of a foreign State against his employer, a railroad, which is subject to the jurisdiction of the courts of this State.

3. The petition in the instant case was sufficient to allege a cause of action for the equitable relief sought, and it was error to sustain the general demurrers and dismiss the action.

[fol. 30] ALLEN, Justice:

Atlantic Coast Line Railroad Company, hereinafter referred to as the employer, brought its petition in equity to restrain N. E. Pope, hereinafter referred to as the employee, from prosecuting his action in the Circuit Court of Jefferson County, Alabama, under the Federal Employers' Liability Act, for alleged personal injuries sustained in Ben Hill County, Georgia, his place of residence. The substance of the employer's complaint was that the employee's suit was brought in the Alabama court for the purpose of unreasonably and inequitably burdening the employer and subjecting it to unnecessary and unreasonable inconvenience and expense, and for the purpose of vexatiously harassing and annoying the employer. The prayers were for an injunction restraining the employee from further proceeding in the prosecution of the Alabama suit. The general demurrers of the employee were sustained and the petition was dismissed. The case is here on a writ of error complaining of that judgment.

1. The power of a court of equity to restrain a person within its jurisdiction from prosecuting a suit in a court of a foreign State rests upon the basis that the person whom it is sought to enjoin is under the jurisdiction of the court and can be prevented from doing an inequitable thing. Engel v. Scheuerman, 40 Ga. 206; Ambursen Hydraulic Construction Co. v. Northern Contracting Co., 140 Ga. 1, 7 (78 S. E. 340, 47 L. R. A. (N.S.) 684). When both parties to an action in a foreign State are domiciled in this State, a court of equity in this State can in personam direct the parties, by injunction, to proceed no further in such State. Such power is not to be exercised capriciously, nor to compel litigants to use the courts of this State, nor because the complainant in the equity suit has good reason to apprehend a less favorable result in the foreign court; but it is neces-
[fol. 31] sary that the complainant show that the action has for its purpose or necessary effect the obtaining of an in-

equitable or unconscionable advantage over the complainant. McDaniel v. Alford, 148 Ga. 609 (97 S. E. 673). See Manning v. French, 133 U. S. 186; 2 Story's Equity Jurisprudence (14th ed.) § 1224; 4 Pomeroy's Equity Jurisprudence (5th ed.) § 1360. When such power is used, it acts only against the person of the resident plaintiff in the foreign suit, and not against the court itself, and should be exercised where not to exercise the power would be incompatible with equity and good conscience. The consideration in granting an injunction should overbalance the right of the party to bring his action in another State having jurisdiction of the parties and cause of action. O'Loughlin v. O'Loughlin, 6 N. J. 170 (78 Atl. 2d, 64); McWhorter v. Williams (Ala.), 155 So. 309. It has been held that a court of equity, upon equitable considerations, may enjoin a resident of the State from maintaining an action in a foreign jurisdiction, which arose in a State having jurisdiction of the parties and cause of action, where the local court had first acquired jurisdiction (Ambursen Hydraulic Construction Co. v. Northern Contracting Co., supra); where the foreign action was brought to perpetrate a fraud or to oppress wrongly the opposite party (Missouri Pac. Ry. Co. v. Harden, 158 La. 889, 105 So. 2; Chicago, M. & St. P. Ry. Co. v. McGinley, 175 Wis. 565, 185 N. W. 218); to obtain an undue advantage (Pere Marquette Ry. Co. v. Slutz, 268 Mich. 388, 256 N. W. 458); or to evade the law of the domicile (McWhorter v. Williams, supra). It has also been held that in such cases injunctive relief will be refused where the party can obtain full and adequate relief in the jurisdiction where the action is pending (Bank of Pittsburgh, National Association v. United Electric Coal Co., 9 Del. Ch. 151, 142 Atl. 368; Wabash Ry. Co. v. Peterson, 197 Iowa 1331, 175 N. W. 523; Guggenheim v. Wahl, 203 N. Y. 390, 96 N. E. 726; or where the relief, if granted, [fol. 32] would be unenforceable (Federal Trust Co. v. Conklin, 87 N. J. Eq. 185, 99 Atl. 109; Grover v. Woodward, 91 N. J. Eq. 250, 109 Atl. 822); or where the plaintiff merely prefers his own court (American Express Co. v. Fox, 135 Tenn. 489, 187 S. W. 1117); or distrusts the court of the foreign State (Columbian Nat. Life Ins. Co. v. Cross, 298 Mass. 47, 9 N. E. 2d, 402; United States Fire Ins. Co. v. Fleenor, 179 Va. 268, 18 S. E. 2d, 904); or be-

cause of differences in the laws of the two States as to the measure of damages (Tri-State Transit Co. of Louisiana v. Mondy, 194 Miss. 714, 12 So. 2d, 920); or because of the possibility of a larger verdict in the foreign action (Boston & M. R. v. Whitehead, 307 Mass. 106, 29 N. E. 2d, 916); or because of a mere consideration of expense or inconvenience as to the party's witnesses and preparation for trial of the foreign action (Chicago, M. & St. P. Ry. Co. v. Schendel, 292 Fed. 126; Missouri-Kansas-Texas R. Co. v. Ball, 126 Kan. 745, 271 Pac. 313; Bavuso v. Angwin, 166 Kan. 469, 201 Pac. 2d, 1057). For annotations on the subject, "Injunction by State courts against action in court of another State," see 91 A. L. R. 570, 115 A. L. R. 241, 6 A. L. R. 2d, 896. See also "The Doctrine of Forum Non Conveniens," 29 Columbia Law Review 1; Gulf Oil Corp v. Gilbert, 330 U. S. 501 (67 Sup. Ct. 839, 91 L. ed. 1055).

2. It is contended by counsel for the employee that the provisions of the Federal Employers' Liability Act (45 U. S. C. A. § 56), and certain decisions of the United States Supreme Court applying this section of the act, prevent a court of equity in this State from enjoining the employee from maintaining the suit in the Alabama State court; that, under this section of the act, the employee had a right to bring in his action in Jefferson County, Alabama, the railroad being subject to the jurisdiction of the courts of that county. It is insisted that the rulings in Baltimore & Ohio Railroad Co. v. Kepner, 314 U. S. 44 (62 Sup. Ct. 6, 86 L. ed. 28, 136 A. L. R. 1222), and Miles v. Illinois Central Railroad Co., 315 U. S. 698 (62 Sup. Ct. 827, 86 L. ed. 1129, [fol. 33] 146 A. L. R. 1104), prohibit the courts of this State from granting injunctive relief in cases of this nature. In the Miles case it was held that section 6 of the Federal Employers' Liability Act prevents a State court from enjoining, on the ground of inconvenience and expense, a resident citizen from prosecuting an action under said act in a State court of another jurisdiction which has jurisdiction of the parties and the cause of action. The Kepner case held that a State court, where the cause of action arose, and where the parties resided, could not enjoin the employee from maintaining his action in a Federal court of another State, upon the ground of inequity, vexatiousness, and

harassment. In the Miles case, which was a 5 to 4 decision, Mr. Justice Reed, speaking for the majority, said: "As Congress has permitted both the State and Federal suits, its determination that the carriers must bear the incidental burden is a determination that the State courts may not treat the normal expense and inconvenience of trial in permitted places, such as the one selected here, as inequitable and unconscionable." P. 705. Mr. Justice Frankfurter, in a dissenting opinion, which was concurred in by Chief Justice Stone and Justices Roberts and Byrnes, said: "The power of equity to restrain the prosecution of unconscionable suits has been part of the very fabric of the State courts as we have known them in our whole history. And nothing in the Federal Employers' Liability Act, its language, its history, or its policy, warrants a denial of this power to the States." P. 721.

From what was said by some members of the court in those cases, as to causing employers unnecessary expense and inconvenience in trying cases in courts far removed from where the cause of action arose and the employees resided, it is apparent that they recognized the unfairness to the employers, but were of the opinion that relief could be granted only by Congress, and not by the court. In 1948, Congress enacted section 1404 (a) of Title 28, U. S. C. A., as follows: "For the convenience of parties and [fol. 34] witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." Its effect was to adopt in statutory form the doctrine of forum non conveniens, or the principle of Anglo-American law that a court having jurisdiction may decline to exercise it on considerations of convenience, efficiency, and justice. In Ex Parte Collett, 337 U. S. 55 (69 Sup. Ct. 944, 93 L. ed. 1207), the court had before it the question as to whether the 1948 amendment to the Judiciary Act quoted above was applicable to a cause of action under the Federal action under the Federal Employers' Liability Act, brought in a Federal district court of Illinois for a cause of action arising in Kentucky, where the employee and all the witnesses resided. It was held that this amendment did apply to actions under the Federal Employers' Liability Act, and that the Federal district court of Illinois did not err in transferring

the case to Kentucky. In Southern Railway Co. v. Mayfield, 340 U. S. 1 (71 Sup. Ct. 1, 95 L. ed. 3), the court had before it the question as to whether or not a State court was free to apply the doctrine of forum non conveniens to a transitory cause of action, where the plaintiff was a resident of a foreign State wherein the cause of action arose. Mr. Justice Frankfurter, who had dissented in the Miles and Kepner cases, speaking for the majority of the court, said that the Missouri court was free to apply the doctrine of forum non conveniens provided it did not contravene any constitutional right of the employee to maintain his action or violate any established rule of State procedure. It was held that there was nothing in the Federal Employers' Liability Act prior to the act of 1948 (28 U. S. C. A. § 1404 (a), supra) which purported to force a duty upon a State court to entertain or retain a suit upon any transitory cause of action "against an otherwise valid excuse." In a concurring opinion, Mr. Justice Jackson said: "The Missouri court appears to have acted under the supposed compulsion of Miles v. Illinois Central R. Co., 315 U. S. 698, among [fol. 35] others of this court's decisions. The deciding vote in that case rested, in turn, only on what seemed to be compulsion of statutory provisions as to venue. By amendment, 28 U. S. C. § 1404(a), as interpreted in Ex Parte Collett, 337 U. S. 55, Congress has removed the compulsion which determined the Miles case, and the Missouri court should no longer regard it as controlling. A Federal court in Missouri would now be free to decline to hear this case and could transfer it to its proper forum. Certainly a State is under no obligation to provide a court for two non-resident parties to litigate a foreign-born cause of action, when the Federal Government, which creates the cause of action, frees its own courts within that State from mandatory consideration of the same case." p. 576.

From these decisions, it is clear that the rulings in the Miles and Kepner cases, supra, are no longer controlling on the question now before us. It being clear from the decisions in the Collett and Mayfield cases, supra, that the courts in the State where transitory causes of action are pending have a right to apply the doctrine of forum non conveniens, no sound reason exists why a court of equity, where the employee resides and where the cause of action

arose, having jurisdiction of the parties, cannot, in a proper case, on equitable principles, restrain the employee from prosecuting his action under the Federal Employers' Liability Act in a court of a foreign State. Whatever uncertainty was occasioned by the Miles and Kepner cases arose, perhaps from the sharp conflict in the views of the members of the court, the narrow numerical division of the court, and the wavering circumstances of time and events. At least for the present, the views of the minority in the Miles and Kepner cases are the views of the majority in Ex Parte Collett and Southern Railway Co. v. Mayfield, supra. We are bound by controlling decisions of the United States Supreme Court as of today. Sufficient unto the day is the decision thereof.

[fol. 36] We are therefore of the opinion that there is nothing in the Federal Employers' Liability Act, or in the currently prevailing decisions of the United States Supreme Court construing this act, that prevents a court of equity in this State from exercising jurisdiction in cases of the character here under consideration.

3. The only question that remains for decision is: did the allegations of the petition of the employer set forth sufficient facts from which the conclusion could be drawn that the action of the employee in a foreign State had for its purpose and necessary effect the obtaining of an inequitable and unconscionable advantage over the employer? We are of the opinion that they did. In substance, the facts alleged in the employer's petition were: The employee transacts business in Ben Hill County, Georgia, and has an office and agent therein. The employee is a resident of that county, and has instituted an action against the employer in the Circuit Court of Jefferson County, Alabama, 313 miles or more distant from the county of his residence, claiming damages in the sum of $10,000 on account of personal injuries alleged to have been sustained by him while in the employ of the employer at Fitzgerald, Ben Hill County, Georgia (a copy of the suit attached to the petition showing that the action was brought under the Federal Employers' Liability Act). The employee had a wide choice of convenient courts within the State of Georgia in which he might have instituted his action, as well as in the District Court of the United States for the

Middle District of Georgia, Americus Division. The employer's witnesses, not less than 6, which it expects to use in its defense of the Alabama suit, reside chiefly in Ben Hill County, and it will be necessary to transport these witnesses to Birmingham, Alabama, at a large expense and maintain them while awaiting and during the trial; the employer would be unable to compel the attendance of witnesses by subpoena, whereas such attendance could be compelled if the action had been brought in Geor- [fol. 37] gia. A trial in Birmingham would entail undue and prolonged absence of essential employees from their customary occupations, and would severely affect the operation of the business of the employer; the employee's action will unnecessarily and unreasonably burden and harass the employer, subjecting it to unnecessary and unreasonable inconvenience and expense, imposing a burden upon the efficient operation of its lines of railroad, which is indispensable to the national defense. The employer "verily believes that defendant's action has been brought at Birmingham, Alabama, not only for the purpose of avoiding a trial at or near his residence or at or near where his alleged cause of action arose, but also for the purpose of vexatiously harrassing and annoying the plaintiff and subjecting it to unnecessary and unreasonable inconvenience and expense." The condition of the courts' dockets in this State, which are available to the employee for the prosecution of his action, is such as to permit a fair, speedy, and impartial trial. During the past 24 months counsel for the employee have filed 10 suits against this railroad upon causes of action arising under the Federal Employers' Liability Act; in 9 of these cases the plaintiffs were nonresidents of Alabama; and in all of these 9 cases the cause of action arose outside the State of Alabama.

If the defendant had brought this action in a State court of Georgia, which he had a right to do under the Federal Employers' Liability Act, he would have had to bring it in Ben Hill County. Code, § 94-1101. Or, he could have brought it in the Federal court of the district in which the cause of action arose, or in the Federal court of any district in which the railroad was doing business at the time of the commencement of the action. At that time, the employee had more than one court or place in Georgia in

which he could have brought his suit. A trial in any of these jurisdictions would not entail the expense or inconvenience that a trial in Birmingham would involve: The employee in bringing his suit in Alabama could have brought it in any Federal district court in which the em- [fol. 38] ployer was doing business in Alabama. If he had done so, the employer could have invoked the doctrine of forum non conveniens, and such Federal court would have had the power to transfer the case to a district court in Georgia, in which it could have originally been brought (Collett case, supra); but the employer could not invoke such doctrine in the pending action in the Alabama court, for the reason that the Alabama Supreme Court held in Ex Parte State ex rel. Southern Ry. Co., 254 Ala. 10 (47 So. 2d, 249), in a case identical with the one here under consideration, that under a statute of Alabama (Alabama Code 1940, Title 7, § 97), it was mandatory that the courts of Alabama take jurisdiction of a transitory cause of action, and that the doctrine of forum non conveniens was not applicable. In selecting a State court of Alabama, the employee has thus denied to the employer the equitable right of invoking the doctrine of forum non conveniens, which it would have had if the action had been brought in a Federal court of that State. Likewise, if the employee had brought his action in either the Northern or Southern District Federal Court in Georgia, the employer would have had the right to invoke such doctrine, and such court would have had the power to transfer the case to the Middle District Federal Court. Under the facts alleged in the petition here under consideration, the employee's action could have been prosecuted in the Superior Court of Ben Hill County, Georgia, without an unreasonable delay. The employee is a resident of Ben Hill County, where the cause of action arose. Most of the witnesses for both parties reside here. If the case is tried in Birmingham, Alabama, 313 miles distant from the employee's home, the employer will be put to the expense of transporting witnesses to and from Birmingham, as well as the expenses incident to their stay there during the trial. The Georgia witnesses cannot be compelled to attend the trial in person; and it will entail additional expense in taking their testimony; and the employer would be deprived of having the personal presence of the wit-

nesses before the jury, which it would have in Georgia. [fol. 39] Nothing appearing in the petition to justify the employee in selecting a forum more than 300 miles from his home, and where the cause of action arose, other than his right to do so under a Federal statute, and it appearing that the employer will be put to unreasonable expense and inconvenience in trying the case in Alabama, we are authorized to draw the conclusion that the employee's purpose in filing the action in the Alabama court was to obtain an inequitable and unconscionable advantage over the employer. As was said by Mr. Justice Jackson in Miles v. Illinois Central R. Co., 315 U. S. 698 (supra), at page 706: "The judiciary has never favored this sort of shopping for a forum. It has sought to protect its own good name as well as to protect defendants by injunctions against the practice of seeking out soft spots in the judicial system in which to bring particular kinds of litigation." As to similar rulings of courts of other jurisdictions on like facts, see Bankers Life Co. v. Loring, 217 Iowa 534, 250 N. W. 8; New York, C. & St. L. R. Co. v. Matzinger, 136 Ohio St. 271, 25 N. E. 2d, 349; Reed's Administratrix v. Illinois Central R. Co., 182 Ky. 455, 206 S. W. 794. Also see 49 Mich. Law Review 1061; 30 North Carolina Law Review, 168.

Our ruling is not in conflict with Southern Ry. Co. v. Parker, 194 Ga. 94 (21 S. E. 2d, 94). That case simply held that the courts of Georgia have jurisdiction over transitory causes of action, though the plaintiff was a nonresident of Georgia and the cause of action arose in another State, the defendant therein being subject to the jurisdiction of the courts of this State. The court there dealt, solely with the question of jurisdiction, and expressly declined making any ruling on the question of the power of the court to refuse jurisdiction on the grounds of expense or inconvenience, or its right on equitable grounds to restrain such action. See page 104 of that decision. Nor is our ruling contrary to McDaniel v. Alford, 148 Ga. 609, supra. The action there sought to be enjoined was pending in Hamilton County, Tennessee, only a few miles removed from where the cause of action arose, and from where the [fol. 40] parties resided, in Catoosa County, Georgia. There the two counties were separated only by a State line.

The case of Boyd v. Grand Trunk Railroad Co., 338 U. S. 263 (70 Sup. Ct. 26, 94 L. ed. 55), relied on by counsel for the employee, has no application to the facts in the instant case. It was there held that an agreement between a railroad company and an employee injured by its negligence, which limited the venue of any action by him under the Federal Employers' Liability Act, illegally deprived him of his right to bring his action in any forum, and was void. That case did not involve any question of expense or inconvenience. The recent case of Atlantic Coast Line Railroad Co. v. Wood, decided by the Supreme Court of Florida on April 4, 1952, has been called to our attention. We do not share the view that the Miles case, supra, continues to shackle the State courts of equity.

The petition was sufficient as against the general demurrers of the employee, and it was error to sustain the demurrers and dismiss the action.

Judgment reversed. All the Justices concur. Duckworth, C. J., concurs in the judgment but not in all that is said in the opinion.

[fols. 41-64] IN THE SUPREME COURT OF GEORGIA

JUDGMENT—FILED May 13, 1952

ATLANTIC COAST LINE RAILROAD CO.

v.

N. E. POPE ET AL.

This case came before this court upon a writ of error from the Superior Court of Ben Hill County; and, after argument had, it is considered and adjudged that the judgment of the court below be reversed because the court erred in sustaining the general demurrers and dismissing the petition. All the Justices concur. Duckworth, C. J., concurs in the judgment but not in all that is said in the opinion.

[fols. 65-67] IN THE SUPREME COURT OF GEORGIA

[Title omitted]

ORDER DENYING REHEARING—June 11, 1952

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied. Atkinson, P. J., not participating.

[fol. 68] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO PRINTED RECORD—FILED August 29, 1952

Pursuant to Rule 38, par. 8 of the Supreme Court of the United States it is stipulated and agreed by and between counsel for the above-named parties that there may be omitted from the printed record in the above-entitled cause the following matter not essential to the questions presented by the writ of certiorari to be filed herein:

1. Order and rule nisi on original petition. (R. 13)
2. Order appointing guardian ad litem for N. E. Pope and entry of service thereon. (R. 14)
3. Bill of Exceptions (R. 19)
4. Exhibit A(1) to Bill of Exceptions (R. 24)
5. Exhibit A(2) to Bill of Exceptions (R. 25)
6. Certificate and order of Judge of Superior Court of Ben Hill County to Bill of Exceptions. (R. 26)
7. Acknowledgment of Service of Bill of Exceptions (R. 26)
8. Certificate of Clerk of Superior Court of Ben Hill County of filing of Bill of Exceptions, certificate and acknowledgment of service (R. 27)
9. Certificate of Clerk, Supreme Court of Georgia of filing of Bill of Exceptions (R. 28)
10. Motion for Rehearing (R. 42)
11. Certificate of Counsel to Motion for Rehearing (R. 58)
12. Certificate of Deputy Clerk, Supreme Court of Georgia, of filing of Motion for Rehearing (R. 58)

13. Reponse to Motion for Rehearing (R. 59)

[fol. 69] 14. Certificate of counsel of service of Response to Motion for Rehearing (R. 63)

15. Certificate of filing Response to Motion for Rehearing in Office of Clerk, Supreme Court of Georgia (R. 64)

16. Petition for stay of remittitur and order thereon (R. 66)

17. Certificate of Deputy Clerk, Supreme Court of Georgia, of Record.

It is further stipulated and agreed that should the Clerk of the Supreme Court of the United States deem it necessary or desirable to include any of the foregoing in the printed record, he is authorized to do so.

This the 22nd day of August, 1952.

1. Richard M. Maxwell, 738-50 Seventh St., N. E., Atlanta, Georgia.
2. Thomas J. Lewis, Attorneys for Petitioner, 1209 First Nat'l Bank Bldg., Atlanta 3, Georgia.
3. C. C. Howell, c/o Atlantic Coast Line Railroad Company, Wilmington, N. C.
4. Douglas W. Matthews, 1417 First Nat'l Bank Bldg., Atlanta 3, Georgia.
5. Allan C. Garden, Attorneys for Respondent, P. O. Box No. 308, Fitzgerald, Georgia.

[fol. 70] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 322

N. E. POPE, et al., Petitioners;

vs.

ATLANTIC COAST LINE RAILROAD COMPANY

ORDER ALLOWING CERTIORARI—Filed October 27, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Georgia is granted. Counsel are requested to discuss in their briefs and on oral argument the question whether the judgment sought to be reviewed is final within the meaning of 28 U.S.C. Sec. 1257.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.